#### REMARKS

#### A. 35 U.S.C. § 102

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#### 1. <u>Claim 1</u>

In the Office Action of February 6, 2006, claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by Burkhardt et al. Independent claim 1 states that several angular inclinations of a scanning device in relation to at least one scale are detected and a value for a chronological progression of a change in angular inclination of the scanning device is determined. As described in Applicant's Specification with respect to the embodiments of FIGS. 1-4, an example of angular inclination is the quantity W, the amount of tilting of the scanning device relative scale or measuring direction X. Burkhardt et al. does not disclose either 1) the recited detecting several angular inclinations or 2) determining the recited value for a chronological progression of a change in angular inclination of the scanning device. Accordingly, claim1 is not anticipated by Burkhardt et al. and so the rejection should be withdrawn.

It is noted that the Office Action asserts at page 2 that Burkhardt et al. discloses "[d]etecting several angular <u>positions</u> of a scanning device" (emphasis added). However, claim 1 refers to detecting several angular <u>inclinations</u> of a scanning device and <u>not</u> several angular positions. The Office Action at page 8 further relies on the following passage as "suggesting an inclination (error) value":

evaluating unit. The absolute position value of the second reference mark  $R2_i$  is superimposed on the absolute position value of the first reference mark  $R1_i$  with the correct algebraic sign (+ or -), along with the counting value of the counter. This counting value (Col. 3, ll. 19-23).

The above passage only regards a distance measurement between two positions along the scale.

There is no mention of determining an inclination.

Page 8 of the Office Action also takes selected passages from Applicant's own

Specification at page 5, lines 6, 7, 13 and 14 as suggesting that the term "inclination" suggests an error value. However, the passages refer to European Application 0 555 507 and not Applicant's invention. Looking at Applicant's description of the embodiment of FIGS. 1-3 of his invention, the angular position W obviously refers to a tilt/inclination of the scanning device 2 with respect to the linear measuring direction X or scale 1. This is consistent with the definition of inclination:

3 a: A deviation from the true vertical or horizontal: SLANT; also : the degree of such deviation . . . c (1): the angle determined by two lines or planes (2): the angle made by a line with the x-axis measured counterclockwise from the positive direction of that axis Webster's Ninth New Collegiate Dictionary, p. 609 (copy enclosed).

Since the meaning of the term "inclination" is clear and Burkhardt et al. does not disclose detecting several angular inclinations of a scanning device in relation to at least one scale as recited in claim 1. Accordingly, the rejection is improper and should be withdrawn.

The rejection is improper for the additional reason that Burkhardt et al. does not disclose, determining the recited value for a chronological progression of a change in angular inclination of the scanning device. Since it has been shown that Burkhardt et al. does not disclose detecting the recited angular inclinations, it follows that Burkhardt et al. does not disclose determining a chronological progression of a change in angular inclination. Accordingly, the rejection should be withdrawn.

Despite the improperness of the present invention, claim 1 is being amended to further clarify the nature of the recited term "inclination." This is being done by clarifying that the angular inclination is in relation to a <u>linear</u> measuring direction of at least one <u>linear</u> scale. Since the passage at column 13, lines 19-23 relied on by the Office Action appears to regard the angular measuring device of FIG. 9 and so does not suggest using either a linear scale or a linear

measuring direction, the claims should be deemed patentable over Burkhardt et al.

#### 2. Claims 16-19 and 23

Claims 16-19 and 23 were rejected under 35 U.S.C. § 102(b) as being anticipated by Burkhardt et al. Independent claim 16 states that the first module determines angular inclinations of a scanning device with respect to a measuring direction and the second module determines a value for a chronological progression of several angular inclinations. Burkhardt et al. does not disclose either 1) the recited first module that determines angular inclinations or 2) the recited second module that determines a value for a chronological progression of several angular inclinations for reasons similar to those given above in Section A.1. Accordingly, claim 16 and its dependent claims are not anticipated by Burkhardt et al. and so the rejection should be withdrawn.

Despite the improperness of the present invention, claim 16 is being amended to further clarify the nature of the recited term "inclination." This is being done by clarifying that the invention regards a <u>linear</u> position measuring system, the angular inclination is in relation to a <u>linear</u> measuring direction of at least one <u>linear</u> scale. Since the passage at column 13, lines 19-23 relied on by the Office Action appears to regard the angular measuring device of FIG. 9 and so does not suggest using either a linear scale or a linear measuring direction, the claims should be deemed patentable over Burkhardt et al.

#### B. 35 U.S.C. § 103

#### 1. Burkhardt et al. and Hagl et al.

Claim 20 was rejected under 35 U.S.C. § 103 as being obvious in view of Burkhardt et al. and Hagl et al. Claim 20 depends indirectly on claim 16. As mentioned above in Section A.2, Burkhardt et al. does not disclose nor suggest either 1) the recited first module that determines angular inclinations or 2) the recited second module that determines a value for a chronological

progression of several angular inclinations. Hagl et al. does not cure the deficiencies of Burkhardt et al. since Hagl et al. does not suggest altering Burkhardt et al. to have 1) a first module that determines angular inclinations or 2) a second module that determines a value for a chronological progression of several angular inclinations. Furthermore, Hagl et al. does not disclose nor suggest altering Burkhardt et al. to use either a linear scale or a linear measuring direction. Without such suggestion, the rejection should be withdrawn.

It is noted that the Office Action has asserted that the patentability of claim 20 stands or falls with the patentability of claim 16 since the arguments are the same as given with respect to claim 16. This is not the case. The arguments are different. The argument regarding claim 16 regards anticipation while the argument regarding claim 20 regards obviousness for the combination of Burkhardt et al. and Hagl et al. Furthermore, it is not proper to make a rejection based on claims standing or falling together. Such a rejection is only proper in the context of an Appeal. Prior to an Appeal, the Examiner's job is to examine each claim separately and make an independent determination of patentability for each claim.

#### 2. Burkhardt et al. and Schwaiger et al.

Claim 22 was rejected under 35 U.S.C. § 103 as being obvious in view of Burkhardt et al. and Schwaiger et al. Claim 22 depends indirectly on claim 16. As mentioned above in Section A.2, Burkhardt et al. does not disclose nor suggest either 1) the recited first module that determines angular inclinations or 2) the recited second module that determines a value for a chronological progression of several angular inclinations. Schwaiger et al. does not cure the deficiencies of Burkhardt et al. since Schwaiger et al. does not suggest altering Burkhardt et al. to have 1) a first module that determines angular inclinations or 2) a second module that determines a value for a chronological progression of several angular inclinations. Furthermore, Schwaiger et

al. does not disclose nor suggest altering Burkhardt et al. to use either a linear scale or a linear measuring direction. Without such suggestion, the rejection should be withdrawn.

It is noted that the Office Action has asserted that the patentability of claim 22 stands or falls with the patentability of claim 16 since the arguments are the same as given with respect to claim 16. This is not the case. The argument regarding claim 16 regards anticipation while the argument regarding claim 20 regards obviousness for the combination of Burkhardt et al. and Schwaiger et al. Furthermore, it is not proper to make a rejection based on claims standing or falling together.

#### C. Claims 2-15 and 21

Applicant notes with appreciation that claims 2-15 and 21 have been indicated to contain allowable subject matter.

#### **CONCLUSION**

In view of the arguments above, Applicant respectfully submits that all of the pending claims 1-23 are in condition for allowance and seek an early allowance thereof. If for any reason, the Examiner is unable to allow the application in the next Office Action and believes that an interview would be helpful to resolve any remaining issues, he is respectfully requested to contact the undersigned attorneys at (312) 321-4200.

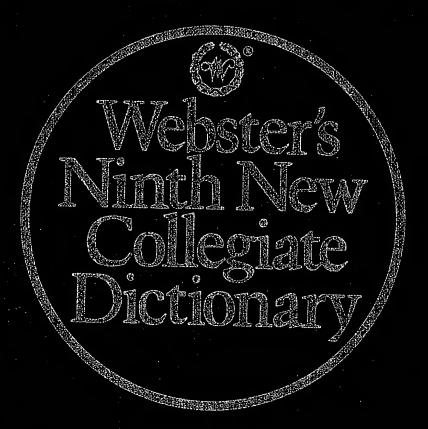
Respectfully submitted,

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1.

: a use of spells or verbal of magic; also: a written or recipion of a particular effect. In the control of the

ification for the purpose or end in, hold, or keep b archaic so of a kind to admit : INSUSCENIES of a kind to admit: INSUSCETIBLE

r performance: INCOMPETERS
(as by reason of mental incompa

ity (/)in-,kā-pə-'bil-ət-ē\ n

in-ca-pa-bly \-biē\ adv \

at-ed; -tat-ing (1657) 1: to mace
o deprive of capacity or natural

\-pas-ə-'tā-shən\ n - in-ca-pacity

n. pl -ties [F incapacité, fr. MR] He quality or state of being inceptual power or of natural or legal

l; -at-ing [L incarceratus priol 560) 1: to put in prison :250
tion \(\lambda\). Incarceratus priol 560 1: to put in prison :250
tion \(\lambda\). Incardination, inconare to ordain as chief priest. Incardination inconare to ordain as chief priest. In adj [MF incarnadin, fi. Olf d. fr. LL incarnatus] (150]] adj [MF incarnadin, fi. Olf d. fr. LL incarnatus] (150]] bloodred to make incarnadine : appear to make incarnadine

to make incarnadine: REDDEN to make incarnadine: REDDEN incarnat, fr. LL incarnatus parano, caro flesh — more at Catily and esp. human nature and isible: EMBODIED (a fiend ~ )

d; -nat-ing (1533): to make m 1 substance to b(1): to give 1: (2): to constitute an embodis ery important human value

a (1): the embodiment of (2) cap: the union of divinit ncrete or actual form of a qual ncrete or actual form of a qua-a trait or typical character to a ss> 2: the act of incarnating passed in a particular bodily, a first vice-president—Walter

: of caution : HEEDLESSNESS 1 caution : CARELESS — in-cap

(1674): incendiary action or

o-re\ n. pl -ar-ies [L meen-ncendere] (15c) 1 a : a per-ing or other property b : an on who excites factions, quar

involving a deliberate buri inflame: INFLAMMATORY (
materials spontaneously but a missile containing chemicals)

fr. LL incensum, fr. L, neut. e, fr. in-+ cendere to burn; DID] (13c) 1: material used d 2: the perfume exhaled broadly: a pleasing scent 3
RAGRANCE

to apply or offer incense to

sing [ME encensen, fr. MF to cause (a passion or emoie extreme anger or indigna

ttivum, fr. neut. of incentivus trus, pp. of incinere to set the IANT] (15c): something that mination or action syn see

tus, pp. of capere to take — GEST — in-cep-tor \-'sep-tor\

nceptio, fr. inceptus, pp. of - more at HEAVE] (15c); an MMENCEMENT syn see ORI-

tive verb: of or relating to a begin-

MF, fr. LL incertitudo, fr CERTAINTY: a : absence of uality or state of being un-

: quality or state of being

it, fr. LL incessant-, incesessare to delay — more at out interruption: UNCEAS in-sest\ n [ME, fr. L incestum, fr. neut. of incestus impure, fr. leasus pure — more at caste] (13c): sexual intercourse between 505.50 closely related that they are forbidden by law to marry; also figure of such a relationship syn see ADULTERY 150.50 (100.50). Ses(h)-cha-was\ adi (1532) 1: constituting or involvants; 2: guilty of incest — in-ces-tu-ous-ly adv — in-ces-tu-ous-parks.

inch\ n [ME, fr. OE ynce, fr. L uncia - more at OUNCE] (bef. more at OUNCE] (bef. in the process of the process manometer c: WATER-INCH every inch : to arometer or manometer c: WATER-INC - within an inch of : almost

To the point of th

meal \'inch-,mel, -'me(ə)l\ adv ['inch + -meal (as in piecemeal)]

jumber of inch-mēl, -'mē(ə)l\ adv [¹inch + -meal (as in piecemeal)] [ishiga] \( \frac{\text{inch}}{\text{inch}} \) \( \text{inch} \) \( \t

thing (as a projectile or a ray of light) at a surface b: ANGLE OF INCIDENCE.

Incident, Vin(1)-sad-ant, -sa-,dent\ n [ME, fr. MF, fr. ML incident, incident, fr. L, prp. of incidere to fall into, fr. in- + cadere to fall — more at CHANCE] (15c) 1: something dependent on or subordinate to a comething else of greater or principal importance 2. a: an occurrence of an action or situation that is a separate unit of experience [HAPPENING b: an accompanying minor occurrence or condition concommant 3: an action likely to lead to grave consequences espin diplomatic matters (a serious border ~> syn see OCCURRENCE limited adj (15c) 1: occurring or likely to occur esp. as a minor consequence or accompaniment (the confusion ~ to moving day) 2: degreedent on or relating to another thing in law 3: falling or striking on something (~ light rays).

Sincidental (in(1)-sa-'dent-1\) adj (1616) 1: being likely to ensue as a chance or minor consequence (social obligations ~ to his job) 2: occurring merely by chance or without intention or calculation incidental n (1707) 1 pl: minor items (as of expense) that are not particularized 2: something that is incidental n (165) 1: by way of interjection or digression: PARENTHETI. (CALLY)

Incidental music n (1864): descriptive music played during a play to incidental music n (1864): descriptive music played during a play to incidental music n (1864): descriptive music played during a play to incidental music n (1864): descriptive music played during a play to

incidental music n (1864): descriptive music played during a play to project a mood (as for a battle, a storm, or a death scene) or to accomny stage action

ipany stage action
incinerate \in-\sin-\parallel n' -at-ed; -at-ing [ML incineratus, pp. of inctinerate \in-\sin-\parallel n' -at-ed; -at-ing [ML incineratus, pp. of inctinerate in L in-\text{ cinis ashes; akin to Gk konis dust, ashes]}
(1555): to cause to burn to ashes — in-cin-er-a-tion \-\sin-\parallel n'-\text{-ra-shan} \ n'
in-cin-er-a-tor \in-\sin-\parallel n'-\parallel n'-\parallel

GINNING incipient adj [L incipient, incipiens, prp. of incipient b begin — more at INCEPTION] (1669): beginning to come into being or to become apparent: COMMENCING (an b solar system) (evidence of b racial tension).—in-cipi-ient-ly adv incipit \in(b)-so-pot, 'in-ko-pit; in-'sip-ot, 'kip-\ n [L, it begins, fr. incipiere] (1897): the first part: BEGINNING: specif: the opening words of a text of a medieval manuscript or early printed book incisal \in-'si-zal, -sol\ adj (1903): relating to, involving, or being the cutting edge or surface of a tooth (as an incisor) incise \in-'siz, -'sis\ w in-cised; in-cis-ing [MF or L; MF inciser, fr. Lincius, pp. of incidere, fr. in- + caedere to cut — more at CONCISE] (1567). I: to cut into 2 a: 10 carve figures, letters, or devices into incised adj (150). 1: cut in: ENGRAVED, esp: decorated with incised figures. 2: having a margin that is deeply and sharply notched (an b control in the surface of the surf

necised adj (15c) 1: cut in: ENGRAVED; esp: decorated with incised figures 2: having a margin that is deeply and sharply notched (an  $\sim$ 

httls:
| httls://doi.or.in-sizh-ən\n (15c) 1 a: a marginal notch (as in a leaf) b
| CUT. GASH: specif: a wound made esp. in surgery by incising the body
| 24: an act of incising something 3: the quality or state of being inci-

manner or presentation) (~ writing) — in-ci-sive-ly adv — in-ci-sive-

heclsor \(\text{in-si-zor\}\) n (1666): a tooth adapted for cutting; esp: one of the cutting teeth in mammals in front of the canines — see тоотн illusthe cutting teeth in mammals in front of the canines in-ci-ta-tion \in-,sī-'tā-shən, ,in(t)-sə-\ n (15c) 1: an act of inciting

is STIMULATION 2: something that incites to action: INCENTIVE incite \(\text{in-sit}\) v in-cited; in-citing [MF inciter, fr. L incitare, fr. in-+citare to put in motion — more at CITE [15c]: to move to action: stirup: spur on: urge on — in-cit-ant \-'sit-sit\) n — in-cite-ment \-mant\ up: spur on:

syn INCITE, INSTIGATE, ABET, FOMENT mean to spur to action. INCITE stresses a stirring up and urging on, and may or may not imply initiating; INSTIGATE definitely implies responsibility for initiating another's often connotes underhandedness or evil intention; implies both assisting and encouraging; FOMENT implies persistence in

goading.
in-ci-vil-i-ty \in(t)-sə-'vil-ət-\(\tilde{\ell}\) n [MF incivilit\(\tilde{\ell}\) fr. LL incivilitat-, incivilitas, fr. incivilis, fr. L in- + civilis civil] (1584) 1: the quality or state of being uncivil 2: a rude or discourteous act in-clem-en-cy \(\tilde{\ell}\) n-'klem-ən-s\(\tilde{\ell}\) n (1559): the quality or state of being

in-clement (')in-'klem-on-sè\ n (1559): the quality or state of being inclement in-clement (')in-'klem-ont\ adj [L inclement-, inclemens, fr. in-+ clement-, clemens clement] (1621): lacking clemency: as a : physically severe: STORMY (~ weather) b archaic: severe in temper or action: UNNERCIFUL—in-clement-ly adv in-clin-able\ in-'kli-na-bal\ adj (15c): having a tendency or inclination; also: disposed to favor or think well of in-clin-atton\ in-klo-'na-shan, in-\ n (14c) 1 a obs: natural disposition of character b: a particular disposition of mind or character: PROPENSITY: esp: LUKING (had little ~ for housekeeping) 2: an act or the action of bending or inclining: as a: sow. NoD b: a tilting of something 3 a: a deviation from the true vertical or horizontal: SLANT: also: the degree of such deviation b: an inclined surface: SLOPE c (1): the angle determined by two lines or planes (2): the angle made by a line with the x-axis measured counterclockwise from the positive direction of that axis 4: a tendency to a particular aspect, state, character, or action (the clutch has an ~ to slip) — in-clin-a-tion-al\-shnal, -shnal, -shnal, -shon-'l\ adj in-cline\ in-'klin\ vo in-clined; in-clineing [ME inclinen, fr. MF incliner. fr. L inclinare, fr. in- + clinare to lean — more at LEAN] vi (14c) 1: to bend the head or body forward: sow 2: to lean, tend, or become drawn toward an opinion or course of conduct 3: to deviate from a line, direction, or course; specif: to deviate from the vertical or horizontal

unawi toward an opinion of course of conduct 3: to deviate from a line, direction, or course; specif; to deviate from the vertical or horizontal ~vi 1: to cause to stoop or bow: BEND 2: to have influence on: PERSUADE (his love of books inclined him toward a literary career) 3: to give a bend or slant to — in-cliner n

SYN INCLINE, BIAS, DISPOSE, PREDISPOSE mean to influence one to have or Syn INCLINE, BIAS, DISPOSE, PREDISPOSE mean to influence one to have or take an attitude toward something. INCLINE implies a tendency to favor one of two or more actions or conclusions; BIAS suggests a settled and predictable leaning in one direction and connotes unfair prejudice; DISPOSE suggests an affecting of one's mood or temper so as to incline one toward something; PREDISPOSE implies the operation of a disposing influence well in advance of the opportunity to manifest

itself. In-cline \in-klin\ n (1846): an inclined plane: GRADE SLOPE in-clined \in-klind, 2 also \in-\n adj (14c) 1: having inclination, disposition, or tendency 2 a: having a leaning or slope b: making an angle with a line or plane inclined plane n (1710): a plane surface that makes an oblique angle with the plane of the horizon in-clin-ing \in-kli-nin\n (14c) 1: INCLINATION 2 archaic: PARTY, FOLLOWING

FOLLOWING in-clinome-ter \in-kla-'nām-ət-ər, in-; in-klī-\ n (1842) 1: an apparatus for determining the direction of the earth's magnetic field with reference to the plane of the horizon 2: a machinist's clinometer 3: an instrument for indicating the inclination to the horizontal of an axis of a chinocompaignment.

reference to the plane of the horizon 2: a machinist's clinometer 3: an instrument for indicating the inclination to the horizontal of an axis of a ship or an airplane in-clip \in-'klip\ vi, archaic (1608): CLASP, ENCLOSE inclose, inclosure war of ENCLOSE ENCLOSURE inclose, inclosure war of ENCLOSE ENCLOSURE include \in-'klid\ vi in-clud-ed; in-clud-ing [ME includen, fr. L includere, fr. in-+ claudere to close — more at CLOSE] (15c) 1: to shut up: ENCLOSE 2: to take in or comprise as a part of a whole 3: to contain between or within (two sides and the included angle) — includ-able or in-clud-ible \'-'klid-0-bol\' adj

Syn INCLUDE. COMPREHEND. EMBRACE, INVOLVE mean to contain within as part of the whole. INCLUDE suggests the containment of something as a constituent, component, or subordinate part of a larger whole; COMPREHEND implies that something comes within the scope of a statement or definition; EMBRACE implies a gathering of separate items within a whole; INVOLVE suggests inclusion by virtue of the nature of the whole, whether by being its natural or inevitable consequence. inclusion \( \in-'klid-2n\n \n) in \( Li\ \text{inz} \) included: as a : a gaseous, liquid, or solid foreign body enclosed in a mass (as of a mineral) b: a passive product of cell activity (as a starch grain) within the protoplasm 3: a relation between two classes that exists when all members of the first are also members of the second — compare MEMBERSHIP 3.
inclusion body n (ca. 1923): a rounded or oval intracellular body that consists of elementary bodies in a matrix, is characteristic of some virus diseases, and is believed to represent a stage in the multiplication of the virus
in-clusive \in-'klid-siv, -ziv\ adj (1515) 1: comprehending stated limits

virus in-clusive \in-klü-siv, -ziv\ adj (1515) 1: comprehending stated limits or extremes (from Monday to Friday ~>> 2 a: broad in orientation or extremes (from Monday to Friday  $\sim 2$  a : broad in orientation or scope b: covering or intended to cover all items, costs, or services — in-clu-sive-ly adv — in-clu-sive-ness n inclusive disjunction n (1942): a complex sentence in logic that is true when either or both of its constituent propositions are true — see

when either or both of its constituent propositions are true — see TRUTH TABLE table inclusive of prep (1709): including or taking into account (the cost of building inclusive of materials) incoercible \nin-kô-2r-sa-bal\ adj (1710): incapable of being controlled, checked, or confined in-cogi-tant \nin-kaj-3t-ant\ adj [L incogitant-, incogitans, fr. in- + cogitant-, cogitans, prp. of cogitare to cogitate] (1628): THOUGHTLESS, INCONSIDERATE

\a\ abut \a\ kitten, F table \ar\ further \a\ ash \a\ ace \a\ cot, cart  $\fine \fine \fin$ \y\ yet \zh\ vision \a, k, a, ce, ce, ue, ue, v\ see Guide to Pronunciation

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